



The Pet Rescue Foundation

Loss of Face: California's 1998 Legislation to Address Homelessness among Companion Animals

By Taimie Bryant, Professor of Law, UCLA

Companion animals, much more than animals used for food or for research, evoke in many people memories of specific relationships and specific companions. The word "dog" or "cat" brings to mind a particular companion animal's face. Yet, just as food or research animals have lost the unique face that creates an empathic response, companion animals suffer a loss of individuality and unique "face" when they become lost, homeless, or unwanted for reasons far removed from their inherent worth. As one of many animals crowded into a shelter, individuals become "problems" and objects of disposal. This tragedy is the result of many factors. Some seem to be the result of lack of human responsibility: insufficient spay/neuter, insufficient awareness of animals' needs, and insufficient knowledge about training and socialization. Some seem to be the result of misfortune: family relocation in the context of few housing options for people who want to share their lives with a companion animal; sudden inability to care for a companion because of financial problems, a family member's

Page 1 of 42

MADDIE'S FUND: 223 Santa Clara Ave #B, Alameda, CA 94501 Phone: 510.337.8989
Fax: 510 337.8988 Email: info@maddiesfund.org Web site: www.maddiesfund.org

allergies, or the person's advancing age or illness; visitors to the home accidentally releasing companion animals; earthquakes and firecrackers frightening and disorienting companion animals who lose their way home. While companion animals and "wannabe" companion animals end up in our animal shelters for a variety of reasons, their experiences in the shelter and their ability to leave the shelter alive is as dependent on the shelter they happen to enter as it is on the face they show to the world when they get there. California has some of the best shelters in the United States and, unfortunately, some of the worst. California is also riding the wave of new public attitudes about what we can expect from our animal shelters and whether death is the kindest fate for a homeless companion animal.

In the fall of 1998, then Governor Wilson signed three pieces of legislation that directly affect homeless companion animals: AB1856 (Chapter 747, Statutes of 1998), which requires pre-adoption sterilization of cats and dogs; SB1659 (Chapter 751, Statutes of 1998), which prohibits the use of carbon monoxide killing chambers; and SB1785 (Chapter 752, Statutes of 1998) which promotes adoption and reunification of lost animals with their human companions. Passed with broad bi-partisan support in both houses of the California Legislature, these bills reflect a belief that animal shelters can and should play an active role in reducing the incidence of pet overpopulation and in increasing humane responses to the plight of homeless animals. These measures also evidence concern that too many of California's shelters have not been functioning fiscally responsibly or in concert with public attitudes about lost and homeless animals. The shelter industry's own statistics reveal the enormous

cost of killing and disposal of pet bodies, yet relatively few shelters have sought aggressively to stem the problem at its source—insufficient spay/neutering—or to facilitate return of companion animals to their homes or adoption into new homes. Both of these humane approaches would reduce costs, killings, and stresses on shelter employees upon whom the job of killing falls.

California is home to some pioneers in this area, but, unfortunately, in some California shelters the goal is still one of “street cleaning” rather than housing for family reunification or adoption. In some places a vicious cycle has become entrenched: shelters’ experience with irresponsible owners who refuse to spay/neuter or to limit their pets’ roaming resulted in some shelters concluding that owners wouldn’t avail themselves of user-friendly hours or spay/neuter programs. Restrictions on shelter hours and the lack of spay/neuter accessibility have, in turn, increased the likelihood that people would behave in apparently irresponsible ways. Lost and homeless companion animals have been caught in the middle and dying in large numbers in California shelters. The three 1998 bills adapted policies and procedures from California’s premier shelters so that the quality of shelter experience for all such helpless, hapless creatures could be improved, even if not to the levels available in California’s leading shelters.

This article is divided into two parts. Part I describes each piece of legislation, criticisms raised about each one, and what animal activists can do to increase the likelihood that the laws will be implemented in ways that benefit animals. Part II discusses why legislation was necessary.

Part I

The Legislation, in order of signature by former Governor
Wilson
Chapter 747, Statutes of 1998 (AB1856, introduced by
Assembly Member Vincent)

What It Does

Chapter 747 requires, for the next five years, sterilization of dogs and cats before they are adopted into new homes from animal shelters or from private rescue/adoption groups.¹ The law is premised on the fact that cat and dog overpopulation is driven directly by failures to neuter/spay. Homelessness, abandonment, cruelty, and increases in feral cat and dog populations are all by-products of insufficient spay/neuter. Although many shelters and rescue groups were voluntarily sterilizing cats and dogs prior to release, this law legally obligates shelters and rescue groups to play a leadership role in reducing pet overpopulation through spay/neuter. Every adoption becomes an opportunity to educate not just that new adopter but everyone else that person tells about his or her new companion and the circumstances of the adoption. Every person who receives an explanation as to why he or she cannot adopt a breed-able animal from the shelter will be made aware of the cruelty and problems of pet overpopulation.

Chapter 747 also addresses overpopulation borne of roaming unaltered cats and dogs by creating civil fines for people who redeem

¹ Food and Agricultural Code Sections 30503, 31751.3.

unaltered cats and dogs from the shelter.² In addition to any other fines or penalties, owners of unaltered pets must pay a \$35 fine for the first instance of reclaiming an unaltered cat or dog, \$50 for the second occurrence, and \$100 for any subsequent instances.

Exceptions

There are a few exceptions to the pre-release sterilization requirement. Chapter 747 does not apply to dog or cat breeders; nor does it apply to private individuals who sell or give away their cat or dog or their cat's or dog's offspring. Chapter 747 covers only (1) adoptions subsequent to the initial transaction between a breeder and purchaser/adopter, and (2) that take place through a public or private shelter or through a rescue group. The law also provides exceptional rules for counties with human populations of 100,000 or less.³ In those counties, dogs and cats can be adopted from shelter or rescue/adoption groups without pre-release sterilization if the following two conditions are both met: (1) there is a written agreement that the adopting party will have the pet spayed or neutered within 30 business days, and (2) the adopting party pays a deposit (of not less than \$40 or more than \$75 dollars). New adopters who fail to abide by the agreement are subject not only to loss of the deposit, but they may also be required to pay civil fines.⁴ Finally, there is also an exception

² Food and Agricultural Code Sections 30804.7 and 31751.7.

³ Food and Agricultural Code Sections 30520 and 31760.

⁴ Food and Agricultural Code Sections 30523 and 31763.

allowed for cats and dogs, who, for medical reasons certified by a licensed veterinarian, should not be spayed or neutered.⁵

Significance

Spay/neuter of companion animals is absolutely essential in reducing the myriad of problems associated with there being too many companion animals for too few companion humans. Accordingly, this is extremely significant legislation, despite any of its limitations or exceptions. This law places shelters in the role of preventing pet overpopulation rather than simply dealing with its effects. Ideally, shelters will be able to educate a broad spectrum of the public and forge collaborative working relationships with veterinarians. At the very least, shelters will not be contributing to the number of companion animals killed in shelters; they will not be killing offspring of cats and dogs they adopt out. Shelters need to be clear with the public about the reasons for their stance on spay/neuter because some people still come to shelters for breed-able animals and still do not understand the link between breeding their cats or dogs at a time when there are already more cats and dogs than society can absorb. Chapter 747 is strong in providing specific penalties for adopting parties who fail to abide by their spay/neuter agreements (in counties with 100,000 people or fewer) and in giving enforcement power to the shelter or rescue group with which the agreement was entered.⁶ It is also significant that the law reaches those who already care for cats and dogs, not just new adopters, by penalizing people who contribute to cat and dog overpopulation by allowing their unaltered companion

⁵ Food and Agricultural Code Sections 30503 and 31751.3.

cats or dogs to roam. Moreover, all fines and unclaimed deposits are, by this law, to be utilized for humane education and spay/neuter programs.⁷

Reactions to Chapter 747 Within the Animal Welfare Community:

Not all contributors to pet overpopulation are covered by the law. Shelters claimed that burdening them with pre-release sterilization requirements would not be as helpful in reducing pet overpopulation as restricting so-called "backyard breeders," commercial breeders, and people who want their pets to experience the miracle of producing one litter. They are probably correct in that claim, particularly since they do so little by way of adoption, which is the trigger event for sterilizing a shelter animal. However, that does not lead to the conclusion that it was unfair or useless to enact this law. Enactment of this law is not a limitation on other means to address the remaining sources of pet overpopulation. Indeed, the ultimate successes from this law could pave the way for additional means of reducing pet overpopulation. Rarely can a single law completely eliminate such an entrenched, multifaceted problem.

Some shelters also claimed that the law would lead to the killing of highly adoptable kittens because veterinarians qualified to do early age spay-neuter are not available in some areas. However, the availability of qualified veterinarians is increasing, particularly in the wake of laws that create a market for such qualifications. Moreover, the law does not require the killing of kittens under the age of

⁶ Food and Agricultural Code Sections 30523 and 31763.

6 months if such a veterinarian is not available. The law states that a cat or dog can be adopted without sterilization if a veterinarian certifies that there are health reasons for releasing the animal prior to sterilization.⁸ The adopting party is legally obligated to leave a spay/neuter deposit and to spay or neuter the animal within 14 days of veterinary certification that the animal is healthy enough (e.g., old enough) to be spayed or neutered. Pre-release sterilization is ideal, but no kitten need die because there are no area veterinarians qualified to do early age spay-neuter.

Another criticism was raised by The Fund for Animals, which claimed that no one would leave a deposit of \$40 for a male kitten when the cost of neutering is less. This, too, is an unrealistic argument. Deposits should always be pegged higher than the cost of neutering because depositors are more likely to get their kitten neutered and retrieve the deposit than they would be if the deposit equaled the cost of neutering.

What Animal Activists Can Do With Regard to Chapter 747:

Animal activists will need to do the following to help insure the most effective result from this law:

- (a) Read and retain a copy of the law so that you can be a source of accurate information for others, including your local shelter.
- (b) Work with your shelter to increase adoptions by responsible people. People need to view shelters as a

⁷ Food and Agricultural Code Sections 30503, 30522, 30523, 30804.7, 31751.3, 31751.7, and 31762.

⁸ Food and Agricultural Code Sections 30503 and 31751.3.

better place than other sources from which to get a companion. Increasing the demand for shelter/rescue cats and dogs will, hopefully, reduce the demand for cats and dogs from sources that do not support spay/neuter.

- (c) Support efforts to find or encourage veterinarians to do early age spay/neuter.
- (d) Follow up on spay/neuter agreements that have been used in lieu of pre-release sterilization in counties with 100,000 people or fewer. As shelter volunteers or as members of the adopting rescue group, urge those with authority to insure that spay/neuter has taken place or to initiate proceedings to fine violators of the agreement.
- (e) Think of creative, effective ways to utilize unclaimed deposits so that the spay/neuter message is heard beyond shelter walls. Demand accountability for the expenditure of unclaimed deposits. They must be used only for spay/neuter programs.
- (f) Document progress and anticipate the need for reenacting this legislation or enacting other legislation by January 1 of 2006, when this legislation expires.

Chapter 751, Statutes of 1998 (SB 1659, introduced by Senator Kopp)

Chapter 751 prohibits the use of carbon monoxide chambers to kill animals, as of January 1, 2000.⁹ The legislation covers all animals and all humans who kill them.

⁹ Penal Code Section 597u.

Why It Was Passed

The law was based on the recognition that carbon monoxide poisoning, particularly as practiced in shelters, is all too frequently cruel and unnecessary. One need only read the transitional legislation in effect from January 1, 1999, to January 1, 2000, to get a sense of how dreadful this procedure can be. Carbon monoxide death chambers were loaded with animals of different species, ages, and temperaments before oxygen in the chamber was replaced with carbon monoxide. Engines used to generate carbon monoxide-containing exhaust were terrifyingly loud, shook the chamber, and worked inconsistently to generate a lethal concentration of carbon monoxide. Irritants in the engine exhaust were not always filtered out of the carbon monoxide, and the chambers could be extremely hot due to the temperature of the exhaust coming from the engines. If carbon monoxide was generated from chemicals, the acid vapors were not always filtered out. Even under the "best" circumstances, animals could easily be aware of suffocation before losing consciousness, particularly younger animals who take more shallow breaths.¹⁰ The use of carbon monoxide gas chambers also exposed human technicians to risk because leaks of the odorless, colorless gas were not always easy to detect.

Reactions to Chapter 751 Within The Animal Welfare Community:

Shelters still using carbon monoxide chambers argued that sodium pentobarbital injection of individual animals was too financially

burdensome and too personally difficult for the employees who would have to deal with each animal as it died. The claim was also made that carbon monoxide chambers can be humane if operated properly. If so, why weren't they? I will address that question later.

What animal activists can do:

Animal activists should do the following to insure a smooth transition to humane methods of killing:

- (a) Read and retain a copy of the law so that you can be an accurate source of information for others, including your local shelter.
- (b) Find out what method is used by the shelters in your area. If your shelter is still using a carbon monoxide chamber, inform them of the new law.
- (c) Even if your shelter is using lethal injection, make inquiries as to the qualifications of the technicians who are killing the animals. Does a veterinarian administer the drug? Animal health technicians may not engage in diagnosis or prognosis of animal diseases (Business and Professions Code §4840.2), and they may kill an animal only by direct verbal, written, or telephonic order of a licensed veterinarian (Business and Professions Code §4840). Additionally, animal health technicians need training to kill humanely with a needle. When a shelter does not have an on-site veterinarian or registered veterinary technician, the law does allow specially trained employees to kill animals

¹⁰ Reported by Sara Wiswall in "Animal Euthanasia and Duties Owed to Animals," in 30 McGeorge Law

(California Code of Regulations Section 2039).

Nevertheless, the guidelines of the State Humane Association of California require a minimum of 8 hours of training.¹¹ Think of the times you have had blood drawn or received an intravenous injection by an unskilled technician. In their last moments of life, animals deserve at the very least a skilled injection.

- (d) Raise consciousness and funds for pre-injection sedation of high-strung or badly frightened animals.
- (e) Reduce the need for any method of killing: work with your shelter to promote responsible adoptions and reunifications of lost animal companions with their human companions. For example, one could volunteer to help with internet postings of pictures of shelter animals, a practice encouraged by the Legislature when it enacted AB 1482 in 1999.

Chapter 752, Statutes of 1998 (SB 1785, introduced by Senator Hayden)

Chapter 752 addresses problems of lost and homeless animals who may be picked up by individuals, private shelters, rescue groups, or public shelters.

Review 801, 804 (1999).

¹¹ "California Euthanasia Training Guidelines," a publication of The State Humane Association of California and the California Animal Control Directors Association.

Too Many Shelter Deaths

Chapter 752 was premised on facts that indicated a needlessly high (and expensive) kill rate in our animal shelters.¹² Aware that Assembly Member Vincent's bill to promote spay/neuter had already been introduced in the Legislature, Senator Hayden sought to address the problem of excessive, routinized killing of companion animals already born but caught in a system that results too easily in their deaths. His chosen task was to identify ways in which individuals who find pets, shelters which impound pets, and rescue groups which try to find pets new homes could be made to work more efficiently together for the good of animals, their companion humans, and taxpayers interested in saving revenues being spent for avoidable killing in our shelters.

The Complexity of the Problem

The problem is complex. Finders of lost pets fear taking them to shelters because of the high probability that the pets will be killed. Yet there haven't always been well-maintained or utilized boards for posting lost/found notices. Finders fear having no way of reuniting lost pets with owners or growing too attached to the lost pet only to have to turn it in to a shelter anyway because they were unable to find the owner. Owners of lost pets have had trouble finding their pets because so many shelters have been open only during the time that owners are at work. Even if an owner manages to get to the shelter, it has been hard to locate animals because of poor record keeping and

¹² In 1997, our shelters killed a reported 576, 097 cats and dogs. [Annual Report of Local Rabies Control Activities, California, 1997](#). California Department of Health Services, Division of Communicable Disease Control, Veterinary Public Health Section.

because animals may be moved around within the system. Moreover, the time limit for finding a lost pet has been very short--72 hours from the "time of capture." Over time shelter personnel had begun to think of all owners as irresponsible because of the misery they observed. The idea of helping owners find their lost pets or find new homes for abandoned or lost pets has seemed futile to shelter personnel overwhelmed with so many animals. Rescue groups, still optimistic about finding homes for shelter animals, have been frustrated by lack of cooperation from shelter personnel; shelter personnel have been frustrated by rescue groups' requests for more humane treatment of animals and cooperation with adoption programs. Few volunteers or fundraisers have wanted to help shelters kill more companion animals. Yet, killing these animals and disposing of their bodies is expensive.

Untangling the Problem

Untangling this problem was accomplished through surveys of a representative sampling of shelters, interviews with former shelter directors, and consultations with rescue groups. It became clear that there wasn't one easy solution to the problem of so many deaths in our shelters. It was equally clear that previous legislative attempts to regulate this field were haphazard and incomplete. Prior to Chapter 752, laws affecting shelters and individual finders of pets were scattered throughout several different Codes. This made it difficult to know one's responsibilities. The first task of Chapter 752 was to bring together different existing requirements, which, if followed, would enhance the opportunity for pets to be adopted or reunited with their

families. For example, under the California Penal Code Sections 597.1 and 597f, animal shelters are required to keep stray animals in good enough condition for "redemption" by the owner. As veterinary care facilities and as holders of others' property, shelters were required to keep records.¹³ Not knowing this, many shelters have kept inadequate records. Now the list of records is embedded directly within the Food and Agricultural Code,¹⁴ where it should be easy for shelter managers to find.

Unfortunately, since so many shelters did not already know their responsibilities, many of Chapter 752's provisions seem new to them. Chapter 752 seems, to the casual reader, to involve many new responsibilities for individuals and shelters, but, in fact, Chapter 752 involves relatively few new responsibilities. What is primarily new about Chapter 752 is its emphasis on seeking life-saving solutions for lost and homeless pets. In the next few paragraphs, I will describe statutes within Chapter 752 that affect individuals, shelters, and rescue organizations. Some of them are new to Chapter 752; some are restatements of obligations that pre-dated Chapter 752 but which are restated or referred to by Chapter 752.

A. Owner/finder responsibilities. Finders of others' property have long been required to make all reasonable efforts to find the owner.¹⁵ To help finders of living animals, it is now mandatory that

¹³ California Business and Professions Code Section 4855 and California Code of Regulations, Title 16, Division 20, Article 4, Section 2031. Civil Code Section 1838 states that failure to keep records leads to the presumption that an injury or loss of property held by another was caused by the keeper (bailee). Records are necessary as a matter of legal liability. Records held by public entities or contracting agents for the public entity are public records which are available to the public for review under the procedures of the California Records Act.

¹⁴ Food and Agricultural Code Section 32003.

¹⁵ Civil Code Section 2080. Chapter 752 merely added the words "person, private entity, or public entity" so that this section would conform to others dealing with depositaries of living animals.

public shelters and their contractors provide a place for lost/found notices to be posted.¹⁶ This should increase the willingness of individuals to house animals whose companion humans will be able to find them, even if the animal is not at the shelter. They (and shelters) are also newly allowed to receive freely offered or advertised rewards (i.e., they may not demand a reward in addition to restitution for necessary expenses to maintain the pet).¹⁷ At the same time, housing lost animals comes with the obligation to treat them "kindly," which now explicitly includes "necessary veterinary care."¹⁸ This provision was added for the lost/abandoned pet's protection and to facilitate the caretaker's recovery from the pet's owner of veterinary expenditures necessary to preserve the life and health of his/her companion animal. Reimbursement from the owner for necessary expenditures is allowed under Civil Code §1833.

Chapter 752 reinforces the need to protect animals by requiring that individuals who cannot care properly for a rescued animal, including veterinary care, turn him or her over to an appropriate animal care facility.¹⁹ This new provision under the Civil Code allows anti-cruelty enforcement against "hoarding" or "collecting" animals without having to prove a mental state of "intent to cause harm," a requirement under Penal Code anti-cruelty statute enforcement. Chapter 752 allows a judge as a condition of probation to prevent a convicted animal abuser from owning, care for, or having any contact

¹⁶Food and Agricultural Code Section 32001.

¹⁷ Civil Code Section 1845.

¹⁸ Civil Code Section 1834. The requirement of "kindly" treatment was already present in that Code Section before Chapter 752 was introduced.

¹⁹ Civil Code Section 1846(b).

with animals.²⁰ It also explicitly provides that convicted animal abusers make restitution for care the animal received while held as "evidence" of the abuse.²¹

B. Shelters' responsibilities. Three changes have been particularly controversial: (a) reinterpretation of what is a reasonable time to give an owner to find and redeem his/her companion; (b) prohibition on the immediate killing of owner-relinquished companions; and (c) emphasis on lifesaving solutions to the problem of homeless companion animals.

(a) Reasonable redemption time periods. Since 1963, shelters were required to hold apparently lost animals so that they could be found and reclaimed by their companion humans.²² Killing companion animals immediately would be a violation of that law, but a specified holding period was not enacted until 1967. In that year, a 72-hour (measured from time of capture) holding period for dogs was introduced.²³ In 1980, the same holding period was introduced for cats.²⁴ The reasonable time for redeeming lost dogs and cats was 72 hours, but under other laws, the reasonable time for owners to reclaim their companions has been defined as 5 days. For example, under the Animal Welfare Act, shelters selling animals to research facilities have to hold the animals for 5 days to give the owner time to reclaim him or her.²⁵ Under California's vicious dog law, owners must receive 5 days notice to contest the designation of "vicious dog" and to

²⁰ Penal Code Section 597.1(k)

²¹ Id.

²² Penal Code Sections 597.1 and 597f.

²³ Food and Agricultural Code Section 31108, Statutes of 1967.

²⁴ Food and Agricultural Code Section 31752, Statutes of 1980.

²⁵ U.S. Code, Title 7, Chapter 54, Section 2135.

reclaim their dog.²⁶ Ironically, owners of troublesome dogs were given much more time than owners of simply lost dogs!

With Chapter 752, Senator Hayden brought the interpretation of a reasonable time period to reclaim animals into line with other laws and with the public's expectation of a reasonable period of time to reclaim their companions. Chapter 752 increased the holding period to 4 or 6 days, depending on the shelter's open-to-the-public hours. When California's holding period was 72 hours, there was only one state with a shorter holding period-- Hawaii, with a 48-hour holding period. Now that California has increased the holding period, we have joined the bottom six states in the country in terms of holding period.²⁷ By national standards, our current holding period is far from generous. The holding period structure is unusual, however, in being tied to hours of operation.²⁸ If a particular impounded pet is made available one weekday evening until at least 7 p.m. or one weekend day, that particular pet must be held only 4 days, not counting the day of impoundment. All pets will have this possibility if a shelter is open during hours the working public can come on 1 or 2 spaced evenings, depending on whether the shelter is open on weekends. If it is not possible for a particular impounded pet to be seen by the public one weekend day or one weekday evening until at least 7 p.m., then the shelter must hold the pet for 6 days. The first three days are "owner-redemption" days, although would-be adopters can ask for the pet when the first three days are over. During the second three days, the

²⁶Food and Agricultural Code Section 31621.

²⁷ The others are Arizona, Hawaii, Maryland, Ohio, Oregon, and Utah

²⁸ Food and Agricultural Code Sections 31108, 31752, 31753.

pet may be adopted immediately or reunited with his/her companion human.

Chapter 752 reinforces prior law that provided for the impoundment of stray animals, not just cats and dogs.²⁹ Chapter 752's holding periods apply to other legally allowed companion animals.³⁰

(b) Prohibition of immediate killing of owner-relinquished pets. People who cannot keep their companion animals often bring them to shelters. Mistakenly taking the name "shelter" literally at face value, many of these people expect their companions to be sheltered for a reasonable period of time for adoption (unless the animal is suffering and in need of euthanasia). They frequently bring in the companion's bed, toys, and food, but those companions have usually been killed before the owner even starts his or her car in the parking lot. This was the case despite the facts that as many as 75% of owner-relinquished pets are placeable³¹ and that shelters have had no legal obligation to take in owner-relinquished companions, let alone to kill them. After Chapter 752, they still have no obligation to take in owner-relinquished companions. However, Chapter 752 states that if they take in owner-relinquished companions, they cannot immediately kill and dispose of them at taxpayer expense. Those animals must be given 1 business day (not counting the day of impoundment) to be redeemed by their true owner, in the event that he or she was

²⁹ Penal Code Section 597f and 597.1.

³⁰ Food and Agricultural Code Section 31753.

³¹ See, for example, Natalie DiGiacomo, Arnold Arluke and Gary Patronek, "Surrendering Pets to Shelters: the Relinquisher's Perspective," 11(1) *Anthrozoos* (1997) and Colorado State University, "News and information press release" dated February 25, 1998 (<http://www.colostate.edu/depts/pr/releases/news/pet-owner-survey.html>). These reported studies indicate that only 15 to 24% of owner-relinquished pets are candidates for euthanasia from the standpoint of the animal's health or temperament.

surrendered by someone other than his or her true human companion, and another business day to be available for immediate adoption or redemption by the real human companion.³² The holding period does not apply to animals in need of immediate euthanasia.³³

(c) Emphasis on saving lives. In policy sections within the Civil Code, the Food and Agricultural Code, and the Penal Code, Chapter 752 promotes adoption of healthy and reasonably treatable animals whenever possible.³⁴ In the absence of policy statements to the contrary, the de facto state policy has been to kill lost and homeless companion animals. With some notable exceptions, shelters have failed to provide hours the working public can visit the shelters for adoptions or redemptions of their companion animals. They have failed to provide lost/found services. They have failed to keep records adequate to find pets within the system. They have failed to use freely offered microchip scanning services. They have failed to provide adequate veterinary health care for many animals. They have resisted working with the rescue/adoption community. They have failed to raise funds aggressively to promote lifesaving methods to spare the lives of placeable companion animals. They have used tax dollars to kill animals they didn't have to accept in the first place ("owner-relinquished" pets) and to kill animals whose companion humans never even had a chance to locate them.

Our shelters have a very bad track record when it comes to adoption. In California in 1997 with a statewide human population of close to 33 million, only 142,385 cats and dogs were adopted from our

³² Food and Agricultural Code Section 31754.

³³ Id.

³⁴ Civil Code Section 1834.4; Food and Agricultural Code Section 17005; Penal Code Section 599d.

shelters.³⁵ 576,097 were killed.³⁶ These statistics belie the breast-beating of shelters and sheltering organizations that have claimed that the longer holding period will mean the killing of placeable pets to make room for unplaceable strays. The sad fact is that most animals are killed in our shelters, no matter what their condition.

The new policy code sections in Chapter 752, which affirm lifesaving wherever possible, do not contain “duty language” upon which lawsuits can be brought, and the statutes state specifically that they cannot be used in actions for monetary damages against shelters. Nevertheless, policy sections do guide interpretation of statutes that do contain specific obligatory conduct (i.e., “duty language”). The statutes that create specific, actionable duties require the following: specific holding periods for all impounded companion animals, maintenance of a way for the public to post lost/found notices, release of a companion animal scheduled for death to a nonprofit animal rescue/adoption group, if requested by the group; temperament testing of feral cats before denying to feral cats the extended holding period; use of all reasonable means to locate an animal's human companion; the holding of pre- or post-seizure hearings so that individuals can contest the seizure (and destruction) of their companion animals. Policy code sections guide those with duties as to why those legal duties came about and how to fulfill them. They also come into play when lawsuits are initiated due to alleged violations of specific duties. They help in resolving ambiguity about the purposes and appropriate means of fulfilling one’s duties under the law. So, for

³⁵ California Department of Health Services, Division of Communicable Disease Control, Veterinary Public Health Section in their Annual Report of Local Rabies Control Activities, California, 1997.

³⁶ Id.

example, if a shelter erred on the side of finding all fractious cats to be feral in order to justify killing them earlier, it would be violating the policy preference to spare life when possible. Another example is throwing up unnecessary roadblocks to nonprofit rescue and adoption groups so that they can have fewer animals. This not only violates the law itself, but also violates the spirit of the policy sections, which promote lifesaving. If shelters are concerned about cruelty or "hoarding," they have many legal avenues of dealing with it, some provided by Chapter 752 itself, without obstructing the vehicle provided for animals to be rescued from the shelter.

C. Rescue group responsibilities. Before Senator Hayden introduced SB 1785, rescue and adoption groups voiced concerns about inconsistent access to shelter animals for the purpose of finding them homes. As frequent visitors to the shelters, rescuers saw systemic problems and inhumane treatment of animals, but their access to animals was conditioned on keeping their mouths shut. Under Chapter 752, rescue/adoption groups with IRS Code 501(c)(3) status are not dependent on shelter approval to adopt pets from the shelter. Their right to take these animals is no longer legally premised on silence as to shelter practices and violations of the law.

However, rescue/adoption groups are subject to all the requirements of individuals who find or house companion animals. They must provide humane and "kindly" care. In addition, although rescue/adoption groups with IRS Code 501(c)(3) status can take out a shelter animal right before he or she is due to be killed, they must be assertive in maintaining awareness of the animals in the shelter and in making requests for animals. They may not take out animals and

subject them to cruel circumstances, even if it is in the interest of keeping them alive, without running the risk of the heightened punishments for animal cruelty under Chapter 752's amendment of anti-cruelty provisions. One proved case of animal cruelty can now, under Chapter 752, result in shutdown of an entire rescue/adoption operation.³⁷

Reactions to Chapter 752 Within the Animal Welfare Community:

Shelters already moving in the direction of saving lives through spay/neuter, owner-reunification, and adoption have been heartened by Chapter 752's approval of their methods. Some have expressed relief for the animals in less progressive shelters. Chapter 752 could not redirect the flow of funds for prevention and lifesaving to the extent that those activities are prioritized by the best managed shelters in the state, but, at least, it was able to shift the use of funds somewhat so that all impounded animals in California have some chance of being seen, reclaimed, or adopted.

A few shelters and sheltering organizations have accused Senator Hayden, the consultants who worked on Chapter 752, and the Legislature/Governor of naivete that will hurt animals. Here are some of the criticisms of Chapter 752:

(a)"**Longer holding periods means that placeable pets die** because unplaceable pets must be housed." This is a favorite criticism, but it is a red herring. The horrible fact is that the vast majority of companion animals die in our shelters regardless of their status.

³⁷ Penal Code Section 597.1.

Some of our worst shelters protest that they want to kill unadoptable pets so that they can keep the adoptable ones, when, in fact, they kill almost everyone and have scarcely lifted a finger to help owners find lost pets or would-be owners adopt pets. Secondly, this argument totally ignores the statutory obligation to be first and foremost a bailee for people's lost pets.³⁸ Fluffy or Spot may not look like good adoption candidates to some kennel worker, but Fluffy and Spot may very well be family members whose families miss them and love them regardless of their age, infirmities, or lack of objective beauty. Moreover, these complaining shelters avoid comment on the embarrassing fact that the overwhelming majority of states in this country provide far more time for owners to claim their lost pets and for would-be owners to adopt.

(b) "**Holding feral cats is cruel.**" Prior to Chapter 752, shelters were required to hold all stray cats, regardless of temperament, for 72 hours. Chapter 752 recognizes that it is difficult to ascertain whether some cats are feral or scared but tame. It also recognizes that some people care for feral cats, despite the fact that they are not the stereotypic "pet" cat, and would be willing to claim these cats and pay the required fees for release. Chapter 752 approximates the prior holding period for feral cats by stating that the holding period for truly feral cats need be only 3 days (not including the day of impoundment), instead of the 4 or 6 day holding period.³⁹ Since many shy, scared, or temperamental tame cats can appear to be feral,

³⁸ Penal code Sections 597f and 597.1.

³⁹ Food and Agricultural Code Section 31752.5.

Chapter 752 provides 3 days for a cat to calm down. At the end of that time, if a cat tests truly feral and has not been claimed by his/her caretaker, he or she can be killed or released to a nonprofit rescue/adoption group, if the group has requested him/her.

(c) "**Chapter 752 fails to provide funding.**" There is much to say about this criticism. First, this reaction is based on interpreting Chapter 752 as simply requiring longer holding periods before animals are killed. It accepts the "business as usual" practice of killing animals without attempts to locate their human companions or to find responsible new homes. This is a costly business practice. At enormous, documented expense to the public, many shelters blithely kill and dispose of the bodies of animals whose human companions never had a chance to reclaim them. Every time someone is reunited with his or her companion and every time a companion animal is adopted, two financial effects occur: (1) the costs of killing and carcass disposal are saved; (2) income from fees/fines comes in. Our poorly run shelters have simply shelled out the money to kill and dispose. Chapter 752 states that Californians do not want this senseless, inhumane, expensive killing to continue. Chapter 752 creates a fiscally responsible management strategy for those poorly run shelters that were unable to figure this out for themselves. Still unable to figure it out, some shelters are arguing that they should be paid to be cost-efficient.

Second, many of the shelters complaining about money have used this new law to jumpstart the flow of money they had been unwilling or unable to secure previously to meet legal obligations of humane treatment that pre-dated Chapter 752. Shelters, such as the

County of Los Angeles County Department of Animal Care and Control, have filed many claims for money from the State which suggest lack of knowledge of their legal duties prior to Chapter 752 and insufficient funds, in some cases, for at least the past 50 years.⁴⁰ This backlogged need for money is laid at the door of Chapter 752.

Third, this argument assumes that humane care follows infusions of money specifically for humane care. It is analogous to the claims of agribusiness and research entities which also claim that being kind to animals is too costly and that they must be subsidized or protected from any financial losses attributed to humane care. Chapter 752 was premised on laws that already required humane treatment for animals. Many shelters have fully complied and have done so within their budgetary limits. When budget limits did not provide what they wanted, progressive shelters reached out to the nonprofit sector and to the community for new ways of fulfilling their responsibilities of humane care. Arguing that their situation is unique, many complaining shelters have not even looked at how successful lower-kill shelters have managed to be humane within their budgets. Nor have they sought a state bond measure or hammered out partnerships with nonprofit groups. Setting up citizens' fundraising groups is difficult when one is seeking money to kill rather than to preserve life. It is no wonder that our kill-oriented shelters have had difficulty. Only government run or heavily subsidized entities, which are not sensitive

⁴⁰See the Los Angeles County test claim filing with the Commission on State Mandates (#98-TC-11) and my response dated May 7, 1999. In that filing, the County asks for, among other things, \$450,000 for a feral cat housing facility premised on a "new" duty to house feral cats and an annual allocation of \$440,000 for "information services" despite prior record-keeping responsibilities and requirements under the California Records Act that the records be available to the public. After the Los Angeles County Board of Supervisors gave county shelters an extra \$400,000, the director of the County's Animal Care and Control

to market pressure to perform in accordance with consumer preferences, could exist for so long past the time the market supports their method of doing business.

(d) "**Vicious dogs are held longer** under the new holding period which means that docile dogs are being killed." There is an extensive body of California law that deals exclusively with vicious dogs.⁴¹ Those statutes provide that an owner must have 5 days notice before a dog can be killed.⁴² That period of time is longer than Chapter 752's 4-day holding period for shelters that provide working public access hours. However, the vicious dog laws do not prohibit local jurisdictions from making their own local ordinances to deal with the problem of vicious dogs.⁴³

(e) "**Nonprofit 501(c)(3) animal rescue/adoption organizations cannot be trusted.**"

Two arguments have been made: (1) collectors will take animals from the shelter; and (2) some nonprofits will divert animals into research. Both of these concerns have some legitimacy. When it comes to animals, who cannot protect themselves or describe their experiences in human terms, unaddressed cruelty can occur in many different settings: individual homes, shelters, rescue/adoption groups. At the same time that Chapter 752 allows rescue/adoption groups to rescue animals from shelters, Chapter 752 heightens the ability of shelters to rescue animals from "rescue/adoption" groups. Given the high kill rate, the low adoption rate, and the lack of motivation in our shelters

reported that a shelter that had not been upgraded for 60 years could be scheduled for upgrade. "Friday Report: No Room at the Refuges," Los Angeles Times, August 6, 1999, Part B, page 2.

⁴¹ Various sections between Sections 301601 and 31683 of the Food and Agricultural Code address the definition and disposition of vicious dogs.

⁴² Food and Agricultural Code Section 31621.

to work with rescue/adoption groups, it was necessary to secure the right of such groups to take animals from the shelters. However, Chapter 752 also increased the means of dealing with "collecting."⁴⁴ Moreover, nonprofit rescue/adoption groups are required to pay fees up to the amount of fees paid by any other adopting person, and they must submit the certification of their IRS Code 501 (c)(3) status as "animal rescue/adoption" nonprofit organization.⁴⁵ The fee structure can easily make it uneconomical for collectors or for dealers to sell them to research laboratories. In fact, a nonprofit group that fraudulently misrepresents itself is far more vulnerable to criminal prosecution and legal sanctions than is a shelter that funnels animals into research laboratories. Similarly, it is far easier to address collecting, that results in the inhumane holding of animals, than it is to address inhumane holding of animals in public shelters that violate the anti-cruelty laws. While public shelters, private shelters with humane officers, and police departments can all be deployed to address cruelty in settings controlled by private individuals, there is precious little that can be done to address cruelty in settings controlled by public entities. Chapter 752 enhanced the ability of public law enforcement entities to address effectively the cruelty of private holders of animals, while it gave private rescuers only the right to take individuals requested ahead of their kill dates and for no more than the standard adoption fee. The scales are still heavily weighted in favor of power residing in our shelters.

⁴³ Food and Agricultural Code Section 31683.

⁴⁴ Civil Code Sections 1834 and 1846(b); Penal Code Section 597.1(k).

⁴⁵ Food and Agricultural Code Sections 31108, 31752, 31752.5, 31753, and 31754.

(f) **“Chapter 752 is too confusing.”** There is no doubt that Chapter 752 is a complex piece of legislation. For the protection of lost animals, this law seeks to adjust the responsibilities of several different actors who take in found animals: private citizens, public shelters, private shelters, and rescue groups. Sadly, there are bad apples in each of these bushels. The shelters contend that Chapter 752 targeted them when, actually, it spotlighted the plight of lost and homeless animals and sought protections and cross-protections for them. Working within existing legal structures, reinforcing duties everyone has to lost/found animals, and providing protections for animals when people or shelters fail in their duties are all complex tasks. But then, animal advocacy is seldom easy or susceptible of positive change with one small squiggle of a legal pen. That is why more talented and skilled people with legal training should enter this field.

What Animal Activists Can Do With Regard to Chapter 752:

Animal activists will need to do the following to help insure the most effective result from this law:

- (a) Read and retain a copy of the law so that you can be a source of accurate information for others, including your local shelter. Chapter 752 requires more work than the other laws discussed above because it worked within a pre-existing legal framework more than the others did. Terms such as “gratuitous depository” and “bailee” may be unfamiliar, but learning their meanings and their legal consequences will

provide a useful basis for understanding private and public responsibilities toward found companion animals.

- (b) Pay particular attention to how your shelter understands the holding period. It is framed in terms of each animal being accessible to the public at least one evening until 7 p.m. or one weekend day.
- (c) Volunteer to comb the lost pet advertisements in local newspapers. Previously prohibited rewards are now available to shelters if the lost companion is impounded in the shelter. Similarly, increasing postings of animals' pictures on the web and proper maintenance of the lost/found bulletin boards will increase reunifications and new adoptions.
- (d) Help rescue groups develop collaborative relationships for the efficient housing and adoption of companion animals.
- (e) Assess ways in which veterinarians and reputable boarding kennels can take over some types of sheltering, such as the sheltering of animals held while alleged cruelty code violations are prosecuted.
- (f) Educate yourself about your shelter's policies and about humane alternatives to their current practices. Read their policies and attend their public meetings. Resist the idea that hurtful practices are as they are because they have to be that way.

Part II. Why Was Legislation Necessary?

If spay/neuter, "owner-redemption," and promotion of responsible adoption are humane and cost-efficient means of preventing and controlling cat and dog overpopulation, why, asked several Legislators, have shelters not been doing those things? Why are shelters engaging in "street cleaning" but not stopping the financial hemorrhaging associated with constantly killing animals, many of whose births could have been prevented with shelter-sponsored spay/neuter programs? Killing, the strategy of choice for so long, has never been a solution; there have always been more animals to fill shelters at taxpayer expense and to kill at taxpayer expense. More spaying and neutering in the past decade has brought impound rates down, but most entering animals die.

An immediate first response to this line of questioning is that some of our shelter managers have, in fact, recognized the futility of prioritizing killing and have taken steps in different directions. The partnership between the San Francisco Department of Animal Care and Control and the San Francisco SPCA is a striking example of the success of creative spay/neuter, "owner-redemption," and adoption programs. In 1999 the combined efforts of these two sheltering entities resulted in the successful placement or family reunification of 71.4% of the cats and dogs who entered the system.⁴⁶ Other success stories abound. San Diego's kill rate dropped significantly after

⁴⁶From "1999 Calendar Year Statistics" in "Partnerships for Life: adoption pact fiscal year report for July 1, 1998-June 30, 1999" (a joint publication of the San Francisco SPCA and San Francisco's Animal Care and Control).

intensive spay/neuter of feral cats,⁴⁷ and the Marin Humane Society has been progressive in many areas. Even the relatively small Laguna Beach shelter, which is run as part of the Police Department, operates on a no-kill basis for adoptable companion animals.

Lack of Initiative and Leadership

Unfortunately, shelters in California do not have a collaborative relationship that enables the industry to move forward without outside prodding. Shelters do not initiate legislation that moves the industry forward.⁴⁸ Nor do national sheltering organizations such as the Humane Society of the U.S. or the American Humane Association consistently assist in taking the best models available and encouraging their adoption. It is notable that in their article about “the Hayden bill,” HSUS recounts interviews only with complainers and not with supporters such as the San Francisco SPCA which has the lowest city kill rate in the entire country.⁴⁹ In criticizing the “lengthy” new holding periods of “the Hayden bill,” HSUS neglects to note that California is, even after Chapter 752, in a cluster of seven states at the bottom of the country in terms of length of holding periods. In fact, Chapter 752 modestly increased the holding period based on surveys of shelters, which revealed that most shelters were holding animals longer because of dropping impound rates for the past 10 years.

⁴⁷This information was obtained from telephone interviews during a survey conducted for drafting Chapter 752 and confirmed in reviews of the San Diego City and County Department of Animal Control “Animal Disposition” charts.

⁴⁸ There are exceptions. For example, when Betty Denny Smith was the Director of the Los Angeles County Department of Animal Care and Control, the Department initiated introduction of the Chapter 1060, Statutes of 1980, which provided a holding period for cats.

⁴⁹ “New Law Leaves Little Leeway in California,” in Animal Sheltering (a publication of the Humane Society of the United States), November-December 1999, pp.1,3 and 4.

Similarly, the American Humane Association's glossy pamphlet on "SB1785" emphasizes what it sees as problems and claims that the law may achieve its goals but at the cost of throwing "overstressed" shelters into chaos.⁵⁰ The President of the SPCA/LA joins in criticizing "the Hayden bill" as confusing,⁵¹ but, in fact, the new legal provision requiring shelters to deal with nonprofits such as hers gives legal security to the SPCA/LA's recent decision to comb the municipal shelters for placeable animals and adopt them through their adoption centers.⁵²

What is the "chaos" complained of and why are apparently leading sheltering organizations condemning a bill in one-sided attacks? Bureaucratic and actual day-to-day chaos in our poorly run shelters is the result of many problems that pre-existed Chapter 752. However, Chapter 752 has added to the ideological chaos surrounding the acceptability of no-kill ideology and practice. On the one hand, we have shelters continuing to kill at prodigious rates without making inroads into the problem of cat and dog overpopulation. On the other, we have shelters like the San Francisco Department of Animal Care and Control and its partner, the San Francisco SPCA, that have brought the rates of killing and homelessness down to nationally impressive lows. Yet, there is still tremendous debate about what approaches are appropriate and what "works." It is interesting that no commentator has remarked on the striking similarity between the policy language of Chapter 752 and the policy language of the

⁵⁰ "Reasonable Practices Forum," a 1999 American Humane Association publication, p. 29.

⁵¹ "New Law Leaves Little Leeway in California," in Animal Sheltering (a publication of the Humane Society of the United States), November-December 1999, at p. 3.

⁵² "Lost dog, lost cause?," Los Angeles Times, Westside Weekly, April 4, 1999, at page 4.

adoption pact between the San Francisco Department of Animal Care and Control and the San Francisco SPCA. Senator Hayden did not simply run a novel idea up the legislative flag pole to see how it would fly; he looked to the most life-saving, cost effective sheltering program around and adopted those aspects that could be transferred to the general industry.

The No-Kill Debate

Perhaps precisely because he used such a successful model, Senator Hayden stepped into a raging controversy about whether “no-kill” is an appropriate goal. It must be an embarrassing loss of face to “humane” societies who continue on their path of killing despite the demonstrated success of a program that prioritizes life over death. But embarrassment does not explain the vehemence of the reaction. An important belief system is at stake. Even though killing is inherently violent and violative of the innate urge to live, for the human killer it is a comfortable response to the question of a humane solution to lost and homeless companion animals. After all, one need never wonder about whether the animal is being mistreated in a new home; he is dead.

I have often wondered how this approach could be seen as anything other than extreme. The statistics on future prospects for impoverished children in America are alarming and profoundly sad, yet no one urges the wholesale killing of these children because most of their lives will be difficult and painful. On the contrary, such statistics motivate efforts to deal with the underlying problems. Why is it acceptable to opt for death instead of solutions in the case of

companion animals? Is it simply a matter of traditional practices? Do people really believe that death is fundamentally better than the uncertainty and inevitable struggles of life--a belief they can act on with animals but cannot act on as to humans? Are these "just" examples of the ideological definition of animals as fungible contrasted with the ideological definition of people as unique individuals? I don't know. But I do know that a non-violent, life-preserving approach is ultimately more comfortable and productive of the search for solutions than the discomfort of wedging the violent (even if painless) act of killing into a rationalization that enables one to continue routine extermination of cats and dogs. Indeed, the ease of killing obviates the search for solutions.

Perhaps Sara Wiswall has captured our present state when she applauds Chapter 752's "aggressive step toward the overall problem of animal overpopulation. . .by placing responsibility on the finders and holders of animals and by promoting adoption rather than extermination" but also notes that society may not yet be ready or willing to come to terms with the ethical issues involved with animal euthanasia.⁵³ In fact, many shelters are throw-backs to the days of killing as the only method of population control and punishing animals for the apparent irresponsibility of their human companions. Those of us working on these bills as they moved through the Legislature searched for answers to the question as to why there is such disparity in animal sheltering and resistance to change even in the face of demonstrated progress at shelters trying new techniques.

Why Doesn't The Killing Stop?

Many explanations surfaced. Most had to do with management incentives to try new approaches. One view, from a person within the sheltering industry, is that many shelter directors have moved up through the ranks from kennel worker to management, carrying with them the belief that killing is appropriate, cost-effective, and supported by the public. When a person who cares about animals takes a job that requires them to kill healthy animals, there is strong internal pressure to justify what she or he is doing without sacrificing the belief that he or she cares about animals. Killing is legitimized as kinder than an uncertain fate. It is deemed "necessary" because of owners' irresponsibility. A shelter culture emerges that reinforces the "need" to kill because of others' irresponsibility, the greater good of painless death as compared to life in a problematic, or cruel, home, the value of providing the service of disposing of animals no one wants to see on the streets, and solidarity among those who kill without receiving thanks from the people who appear to benefit from their "street cleaning."⁵⁴ Certainly it would be easier to believe in the justice and wisdom of killing than to continue to kill while burdened with a nagging suspicion that animals could have and deserve a chance at life, whatever life brings to them. There is just too much cognitive dissonance involved in caring about animals while routinely killing healthy, loving and lovable individuals.⁵⁵ A person whose career

⁵³ Sara A. Wiswall, "Animal Euthanasia and Duties Owed to Animals," in *McGeorge Law Review*, Vol. 30, 801, at pp. 816-817 (1999).

⁵⁴ Arnold Arluke has researched this shelter culture phenomenon and written about it in "Coping with Euthanasia: A Case Study of Shelter Culture." *JAVMA*, Vol. 198, #7, pp.1176-1180.

⁵⁵ Craig Brestrup writes about this elegantly and persuasively in his *Disposable Animals*, a 1997 book published by Camino Bay Books.

is maturing in such a setting may well develop belief systems to support the methods she or he has used for so long.

Second, there would be few occasions to question whether this approach is supported by the public because the general public does not use shelters on a regular basis. If a person rarely visits the shelter, he or she may see nothing amiss or may well believe that a bad experience is atypical. Not finding a lost companion may mean that the animal never came in to the shelter and not necessarily that it was killed immediately or sitting in some shelter in another part of the city. Moreover, if there is proof that the shelter has violated the law even to the extent of killing someone's companion animal, that person is entitled to very limited monetary damages.⁵⁶ It is not cost effective for lawyers to handle those cases, and, even if the shelter pays damages, the amount of money is so small that it fails to serve as a deterrent sufficient to generate change in the shelter. Lawsuits against the government, even suits in which the court simply directs the shelter to follow the law, are notoriously time-consuming, expensive, and difficult to win. Animals can't talk, volunteers won't talk, and shelters control all records. Only volunteers and rescuers who want to find homes for shelter animals have regular dealings with shelters. Yet volunteers' and rescuers' ability to provide relief to

⁵⁶ The monetary damages for loss of property is the fair market value to replace the property. This measure always undervalues the relationship between humans and their animal companions. Wiswall faults Chapter 752 for failing to address the problem of insufficient damages. Wiswall, "Animal Euthanasia and Duties Owed to Animals," 30 McGeorge Law Review 801, at 816 (1999). In fact, the drafters of SB1785 (which became Chapter 752 when enacted) did attempt to correct this problem with an amendment to Civil Code Section 1840. The amendment would have allowed, under some circumstances, damages for the emotional and financial consequences to the owner due to the negligent loss of their living animal property. That provision was eliminated at the insistence of one of Senator Hayden's staffers who believed that it was necessary to remove the provision in order for then Governor Wilson to sign the legislation.

“sheltered” animals is dependent on maintaining a good relationship with shelter personnel.

Third, with so few avenues for correction, shelters could veer farther and farther away from compliance with laws and social norms until finally they could believe that their acts conform to the law and with what the public deserves or wants. How did it happen that carbon monoxide chambers were operated so inhumanely that very specific legislation as to their use was necessary? How could so many shelters know nothing about case law requiring them to hold pre- or post-seizure hearings when confiscating companion animals? Some of that case law is 47 years old!⁵⁷ As a matter of doing the job for which they are paid, how could shelters not know that killing feral cats violates a legal requirement that all stray cats be held for the legally required holding period? In retrospect, perhaps it would have been more shocking if they had known and followed the law in the absence of any pressure to learn about the law or comply with it. If no one knows of the infractions or keeps quiet because of the costs involved or the lack of meaningful redress, what would keep a shelter up to date with laws or social attitudes other than an assertive progressive shelter management team? Do we have assertive, progressive shelter managers? Yes, but precious few.

Far from assertive about defining their mission, a substantial number of shelters are still unwilling or unable to implement the new laws described in this article. According to a Fund for Animals survey

⁵⁷ See, Simpson v. City of Los Angeles, 40 C. 2d 271; 253 P.2d 464 (1953). See, also, Carrera v. Bertaini, 63 C.A.3d 721; 134 Cal Rptr.14 (1976) and Phillips v. San Luis Obispo County Department of Animal Regulation, et.al., 183 Cal App. 3d 372; 228 Cal. Rptr. 101 (1986) (appellate courts’ application of Simpson v. City of Los Angeles to the specific problem of the unconstitutionality of Penal Code Section 597f to the extent it fails to provide for pre- or post-seizure hearings).

conducted in December of 1999, 4 of the 10 shelters still using carbon monoxide chambers were unprepared to switch to sodium pentobarbital despite having had since late September of 1998 to prepare. Similarly, many shelters are unprepared to comply with pre-release sterilization requirements, although their taking effect on January 1, 2000, has been known since late September of 1998. Finally, continuing complaints about Chapter 752 causing the killing of adoptable animals to house unadoptable animals are as legion and ironic as are the accounts of shelters' still choosing to kill animals rather than to allow qualified rescue groups to take them for placement. In some places there has been more hand-wringing, protestation, and talk of repeals than there has been hard work to implement these laws. That Chapter 747 will expire on January 1, 2006, is largely due to the pressure of shelters at the time of its consideration in the Legislature, and Chapter 752 is vulnerable to many different attacks from shelters that resist adding spay/neuter or adoption programs.

What The Future Can Bring

Unlike some who propose some kind of statewide agency oversight of shelters, I believe that the solution to inadequate sheltering lies in the collaborative efforts of people within communities where there are specific needs and service-providers. If an atmosphere supportive of change can be developed, partnerships between public shelters and nonprofit shelters supported by donations can "push" public shelters and local government contractors in the

direction of the mission funded by donations to the nonprofit. A nonprofit humane organization can, through its ability to raise funds to support its mission, provide the local government contractor with alternatives the government can't or won't pay for. If financially strong enough and positioned as a viable "player" in the vicinity, the nonprofit can actually demand acceptance of its policies as a condition of contract work. Such a strategy is also available to public entities that do their own work, if they coordinate with fundraising arms that can raise money for more humane programs than the public entity can secure through budget requests. A "friends of the shelter" program can work, however, only if the public entity is prepared to implement changes in accordance with accepting donations conditioned on changes in humane objectives and practices.

On the other hand, if the nonprofit contractor to provide animal services is dependent on government contract money, it is more likely that the "push" to change will work in the direction of government money deciding how the nonprofit's mission will be accomplished.⁵⁸ Heavier reliance on standard techniques, such as killing and disposal, rather than new approaches, such as spay/neuter, public education, and adoption, is unremarkable when government money is of more importance to the nonprofit's financial security than is donors' money to support its mission. In such a financial environment, nonprofit animal service providers need to be particularly forceful in educating the government-customer as to the proven long term benefits of new

⁵⁸This phenomenon of cooptation has been explored in the academic literature by, among others, Steven Rathgeb Smith and Michael Lipsky in Nonprofits for hire: the welfare state in the age of contracting, Cambridge, Mass: Harvard University Press, 1993.

approaches as demonstrated by shelters that have successfully brought the kill rate down.

Not wanting to accept Wiswall's suggestion that we may not be ready to come to terms with the ethical costs of "euthanasia," I conclude that large enough sectors of the community dealing with lost cats and dogs have, in fact, rejected killing as an immediate response and are hard at work on strategies to reduce homelessness and overpopulation. The view that there has to be a better way is shared by many, including Jill Gilchrist, who heads an SPCA in Kenya. After attending an HSUS Animal Care Expo in February of 1998, she reported that "all morning people taught us how to do euthanasia. . . Then in the afternoon they taught us how to get counseling and cope with the grief because you feel so bad about killing animals. . . That is not going to be us."⁵⁹

It does not have to be us, either. Rescue and adoption groups need to take responsibility for informing themselves of innovative practices through communicating with progressive shelter organizations and by reading paradigm-shifting articles and books such as Brestrup's Disposable Animals. Coordination of efforts to address overpopulation through prevention and responsible rescue can result in substantial change. As knowledgeable participants in creating an atmosphere conducive to change, these groups can forge alliances among themselves and partnerships with shelters. All of us must be prepared to challenge the position that the status quo is all that can be and that silence in the face of injustice or simple wrongheadedness will

⁵⁹ Reported in Animal People, December, 1999, p.1.

protect the most animals. Above all, we must honor the impulse to reject killing as a solution.

About The Author

Professor Bryant teaches courses about animal law and nonprofit organizations at UCLA Law School, where she has taught for the past 12 years. Trained as an anthropologist as well as a lawyer, Dr. Bryant assisted Senator Hayden in the drafting of Chapter 752. In collaboration with other lawyers and veterinarians, she conducted survey and legal research that served as a foundation for various provisions of Chapter 752.